

NOT DESIGNATED FOR PUBLICATION
DIVISION IV
ARKANSAS COURT OF APPEALS

No. CA08-7

CHARLIE ROBINSON
APPELLANT

V.

ARKANSAS DEPARTMENT OF
HUMAN SERVICES
APPELLEE

Opinion Delivered MAY 21, 2008

APPEAL FROM THE CRAIGHEAD
COUNTY CIRCUIT COURT
[NO. JV-06-151]

HON. LARRY B. BOLING, JUDGE

AFFIRMED

SAM BIRD, Judge

Appellant Charlie Robinson appeals from the termination of her parental rights in S.R. (born August 7, 1995). She argues that there was insufficient evidence to support the termination decision. We affirm.

On March 29, 2006, the Arkansas Department of Human Services (DHS) received a report that Robinson, while in the presence of ten-year-old S.R., got into an argument with a friend and was arrested for public intoxication, disorderly conduct, resisting arrest, and endangering the welfare of a minor. The circuit court entered an emergency order placing S.R. in DHS custody.

On April 6, 2006, the court adjudicated S.R. dependent-neglected. The adjudication order required Robinson to comply with court orders and the case plan; cooperate with DHS; maintain stable housing and employment; submit to a psychological evaluation and a drug-and-alcohol assessment; remain drug free and submit to random drug screens; complete

parenting classes; submit affidavits of background information and financial means; watch "The Clock Is Ticking" video; and maintain "at least weekly contact" with the caseworker. The case goal was reunification, and the court authorized DHS to arrange appropriate visitation.

On October 10, 2006, the court entered a review order finding that DHS had made reasonable efforts to provide services but that Robinson had not visited S.R. and had "done little to assist with the goal of reunification." The court reiterated those findings on January 11, 2007, following a permanency-planning hearing that Robinson did not attend. The case goal was changed to termination of parental rights, and the court authorized DHS to discontinue reunification services, noting "little likelihood of successful reunification."

At the termination hearing held August 23, 2007, DHS caseworker Terri Clark testified that Robinson visited S.R. on April 24, 2006, but had not visited her since. Clark said she tried to contact Robinson at home numerous times through December 2006 but Robinson answered the door on only two occasions, November 18 and December 13, 2006. According to Clark, she spoke to Robinson on these dates about the psychological evaluation, drug-and-alcohol assessment, parenting classes, and drug screens that the court had ordered. However, Robinson asked Clark to come back later because she had company. Clark said they set up another time to meet but, when she returned, Robinson was not home.

Clark testified further that Robinson had not watched "The Clock Is Ticking" video; had not submitted to a psychological evaluation, drug-and-alcohol assessment, or drug screen; had not taken parenting classes; and had not provided background and financial affidavits. Clark acknowledged that she had not made referrals or scheduled appointments for these

services but explained that she could not do so because she was not able to talk with Robinson to set them up. Clark additionally stated that Robinson did not initiate contact with DHS or request visitation or services any time from May 2006 through January 2007.

Robinson testified that Clark came to her home “a couple of times” and she asked Clark to come back later because she had company. However, she said, Clark never returned. Robinson recalled getting notes from Clark, but she was not sure where she was when Clark tried to visit her. Robinson testified further that she had watched part of “The Clock is Ticking” video and attended some parenting classes but stopped when DHS discontinued transportation services. She said she would have visited S.R. more if she had received help with transportation.

Robinson explained that she did not attend the January 2007 permanency-planning hearing because she hurt her back. She admitted that she did not notify DHS of her condition. She also said that, after the January 2007 hearing, she did not contact DHS until May 2007 because she had “other problems,” such as being in jail and doing community-service work.

Following the hearing, the court terminated Robinson’s parental rights in S.R. The court cited four grounds, including that Robinson subjected S.R. to aggravated circumstances in that there was little likelihood that services to the family would result in successful reunification. Robinson now appeals from that order.

We review termination of parental rights cases de novo. *Davis v. Ark. Dep’t of Health & Human Servs.*, 98 Ark. App. 275, ___ S.W.3d ___ (2007). Parental rights may be terminated if clear and convincing evidence shows that termination is in the child’s best interest. *Smith v. Ark. Dep’t of Human Servs.*, 100 Ark. App. 74, ___ S.W.3d ___ (2007).

Additionally, one or more statutory grounds must be shown by clear and convincing evidence. *Id.*

Robinson argues first that the court's order failed to state that termination was in S.R.'s best interest. Arkansas Code Annotated section 9-27-341(b)(3) (Repl. 2008) requires the termination decision to be "based upon a finding" by clear and convincing evidence that termination is in the child's best interest. The statute does not require that the finding be in writing. Here, the court declared after the hearing that it was in S.R.'s best interest to be adopted and that DHS's plans for S.R. "meet the child's best interests." These remarks from the bench demonstrate that the court found termination to be in S.R.'s best interest. *See generally Guest v. San Pedro*, 70 Ark. App. 389, 19 S.W.3d 62 (2000) (stating, in a child-support-modification case, that we will not require use of the words "best interest of the child" when it is obvious that the chancellor considered the child's best interest).

Robinson argues next that, in deciding the issue of the child's best interest, the court failed to consider the following factors found in Ark. Code Ann. § 9-27-341(b)(3)(A) (Repl. 2008):

- (i) The likelihood that the juvenile will be adopted if the termination petition is granted; and
- (ii) The potential harm, specifically addressing the effect on the health and safety of the child, caused by returning the child to the custody of the parent

These are matters to be *considered* in assessing the child's best interest, but they need not be proved by clear and convincing evidence. *See McFarland v. Ark. Dep't of Human Servs.*, 91 Ark. App. 323, 210 S.W.3d 143 (2005). Here, information regarding each factor was presented for the court's consideration. DHS caseworker Nicole Carbaugh testified that she

believed S.R. would be adopted, and a DHS report stated that S.R.'s foster mother had expressed an interest in adopting her. After the hearing, the court cited evidence that S.R. was adoptable. As for the potential harm in returning S.R. to Robinson, the court heard testimony that Robinson manifested virtually no interest in visiting S.R. and exhibited little if any motivation to comply with the case plan or court orders. Further, the court found that returning S.R. to Robinson's care would be contrary to S.R.'s best interest, health, safety, and welfare.

Robinson's final argument is that there was insufficient proof of grounds for termination. The court found that four grounds had been proven, but only one ground is required. Ark. Code Ann. § 9-27-341(b)(3)(B) (Repl. 2008). We therefore limit our discussion to the ground set forth in Ark. Code Ann. § 9-27-341(b)(3)(B)(ix)(a)(3)(A) and (B)(i) (Repl. 2008), which states that the parent subjected the child to aggravated circumstances in that there was little likelihood that services to the family would result in successful reunification.

This type of aggravated circumstance occurs where a parent is not following through with offers of assistance, is not completing basic goals of the case plan, and there is a lack of significant progress on the parent's part. *Smith, supra*. In the present case, Robinson had virtually no contact with DHS caseworkers, though she was ordered to stay in touch with them on a weekly basis. When a caseworker finally reached her at home in November and December 2006, Robinson did not ask how she could visit her child or obtain services; instead, she asked the caseworker to come back at another appointed time, then did not show up. Robinson also did not visit her child between May 2006 and January 2007, at which point

the court authorized DHS to terminate services. Thereafter, she did not visit S.R. or contact DHS again until May 2007. Further, Robinson did not complete or make herself available for a psychological evaluation, drug-and-alcohol assessment, parenting classes, or drug screens. She blames DHS for not setting up the necessary referrals and appointments. However, Terri Clark explained that she wanted to talk to Robinson before actually scheduling these services but was unable to do so.

Given these circumstances, we cannot say that the trial court clearly erred in finding that services to Robinson were unlikely to result in successful reunification.

Affirmed.

PITTMAN, C.J., and VAUGHT, J., agree.